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KINSHIP AS CONFIDENTIAL RELATIONSHIP

Any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other, is a confidential or fiduciary relation (Abbott v. Church, 288 Ill. 91, 123 N. E. 306, 4 A. L. R. 975).

Confidential relation is not confined to any specific association of the parties; it is one wherein a party is bound to act for the benefit of another, and can take no advantage to himself. It appears when the circumstances make it certain the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or, on the other, weakness, dependence, or trust, justifiably reposed; in both an unfair advantage is possible. When these circumstances appear the law presumes the transaction void, unless the party claiming the benefit of such transaction shows affirmatively that no deception was used and the act was the intelligent and understood act of the grantor, fair, conscientious, and beyond the reach of suspicion. No precise language can define the limits of the relation or fetter the power of the court to control these conditions. While not confined to any specific association of parties it generally exists between trustee and cestui que trust, guardian and ward, attorney and client, and principal and agent. In some cases the confidential relation is a conclusion of law, in others it is a question of fact to be established by the evidence. The mere existence of kinship does not of itself give rise to confidential relation such as would impose the burden of proof on the one receiving a gift to assert its validity. A child may take a gift from a parent without being required to furnish explanatory testimony. Nor is there confidential relation simply because the parties to the transaction are brothers and sisters (Funston v. Twining, 202 Pa., 88, 90, 51 Atl. 736). Where a conveyance of property is to a relative in consideration of support for life, in the absence of fraud or undue influence, it is favored as a family settlement. Under similar conditions, where the grantee was the servant of the donor and grantee's wife nursed the donor in his last illness, the conveyance was not set aside because of supposed confidential relations (Barnard v. Kell, 271 Pa., 80, 86, 113 Atl. 836).

Where undue influence and incompetency do not appear, and the relation between the parties is not one ordinarily known as confidential in law, the evidence to sustain a confidential relation must be certain; it cannot arise from suspicion or from infrequent or unrelated acts. Care must be used not to confound acts springing from natural love and affection with confidential relations, and, while the line of demarcation may in some cases be narrow, nevertheless, to sustain the integrity of gifts based on such affection in family relations, it is necessary the distinction should exist. (Leedow v. Palmer, Pa., 117 Atl. 410).

Contracts between parent and child are always watched with great jealousy, not only for the purpose of ascertaining that the one likely to be so influenced fully understood the act he was performing, but also for the purpose of ascertaining that his consent to perform the act was not obtained by reason of the influence possessed by the other; not that influence itself, flowing from such relation, is either blamed or discountenanced by the courts; on the contrary, the due exercise of it is considered useful and advantageous to society; but the courts hold, as an inseparable condition, that this influence should be exerted for the benefit of the one subject to it, and not for the advantage of the one possessing it (Pusey v. Gardner, 21 W. Va. 469).

In a considerable number of cases, it has been broadly stated that in the case of a conveyance from a child to a parent, especially if it is a gift, the mere existence of the relationship raises a presumption of undue influence which, unless repelled by the facts and circumstances surrounding the transaction, will warrant a court of equity in setting the same aside.

On the other hand, it has often been held that the mere fact that a conveyance is from a child to a parent does not render it *prima facie* void (11 A. L. R. 744 note).

It seems that fiduciary relation does not exist by reason merely of kinship, but on account of special circumstances existing by reason of the kinship. The relation of parent and child may be fiduciary by reason of the youth and inexperience of the child, on the one hand, or by reason of old age of the parent on the other.

NOTES OF IMPORTANT DECISIONS

PRESENCE OF GLASS IN BOTTLED BEVERAGE SUSTAINED INFERENCE OF NEGLIGENCE.—The case of Goldman & Freiman Bottling Co. v. Sindell, 117 Atl. 866, decided by the Court of Appeals of Maryland, holds that the presence of broken glass in a bottle of beverage when it was first opened after purchase from a retailer, who testified it was in the same condition as when he bought it from the manufacturer, is sufficient to sustain the inference that the manufacturer was negligent in failing to perform his duty to exercise the highest degree of care, to see that the beverage, which he represented as fit for consumption, was so in fact. We quote briefly from the opinion written by Offutt, J.:

"The question then is whether any inference of negligence can be drawn from that fact. It would not of course per se permit the inference that the presence of the glass in the bottle was due to the operation of any particular agency, such as a defect in the machinery or the methods adopted for manufacturing the product, or a want of skill or care on the part of the persons employed in the process of its manufacture, nor is that the negligence charged. The negligence charged is this, that the appellant bottled and sold to the public a drink which it represented as not injurious to health, and that it thereby assumed a duty to the public of exercising at least reasonable care to see that such of its product as was sold for public consumption was not injurious to health, and that in violation of that duty it sold the bottle of Whistle eventually purchased by the plaintiff which at the time it sold it contained broken glass and was for that reason likely to cause serious bodily injury to any one drinking it. The inquiry therefore is whether the presence of broken glass in the bottle at the time it was sold by the appellant was evidence of that negligence. In our judgment it was, and the law applicable to the facts of the case was clearly, accurately, and fully stated in the defendant's granted prayers, which devolved upon the jury the duty of determining from that and all the other evidence in the case whether the defendant had been guilty of the negligence charged in the narr."

WARNING REQUIRED OF GOLF PLAYER IN THE EXERCISE OF DUE CARE.—Plaintiff, a boy thirteen years of age, was caddying on a golf course for a player engaged in a twosome on the third hole, while defendant was engaged in a threesome on the fourth. On this course the third hole is laid out at an angle to the fourth, the third green being much nearer the line of the fourth hole than its tee is, and this third green is only eight feet away from the midway bunker on the fourth fairway. Defendant, driving from the fourth tee, had sliced his ball into the rough over towards the third fairway, and as he got ready for his second shot plaintiff's employer holed out on the third green and started for the fourth tee, while plaintiff started across towards the midway bunker on the fourth fairway, as was customary, to await his employer's next drive, and had taken only two or three steps when he was struck in the eye by defendant's ball on his second shot. Defendant testified that he called "fore" before addressing the ball; others testified that they heard no such warning. Held, that defendant was under a duty to use reasonable care to observe whether there were any persons in the general direction of his drive who might be endangered thereby, and, if so, to see that they were adequately warned, in order that they might be on guard, and that the question of defendant's negligence was properly left to the jury.—Toohey v. Webster, N. J., 117 Atl. 838.

NECESSITY FOR PROVING THAT DECEASED WAS NOT USING ELEVATOR IN ACTION TO RECOVER FOR VIOLATION OF STATUTE REQUIRING GUARDS AT ELEVATOR OPENING.—The case of Weber v. Valier & Spies Milling Company, 242 S. W. 985, decided by the St. Louis Court of Appeals, was an action brought to recover for the death of the plaintiff's deceased, which was alleged to

have been caused by his fall through an elevator opening due to the failure of the defendant to guard such opening as required by statute. There was no witness to the accident, and the only indication, if it can be called such, that the deceased had fallen through the elevator opening, was that his body was found near the elevator on the second floor, it being alleged that he had fallen through the opening on the third floor. The elevator was one peculiar to flour mills, and consisted of a perpendicular belt which operated over pulleys at the top and bottom of the building. The belt was in continuous movement, ascending on one side and descending on the other, having separate openings in the floor for each side. There were steps attached to the belt at intervals of about twenty feet on which employees rode from floor to floor, stepping onto a step as it passed the floor and stepping off upon reaching the floor desired. The Court held that there was no proof of the cause of the deceased's death. The Court also seems to hold that the burden was on the plaintiff, in addition to showing, at least by circumstantial evidence, that the deceased fell through the opening, to prove that the deceased was not attempting to make use of the elevator at the time that he fell. In this respect the Court said:

"Again, even if under the record in this case we were to hold that it was a proper inference from all of the evidence in the case that Weber fell down through the man hoist opening on the third floor, it would still require the additional inference that at the time he so fell through the hoist he was not endeavoring to make use of the man hoist. In doing this we would run counter to the rule that inference cannot be piled upon inference to establish a fact necessary to be proven."

The Supreme Court of Missouri had previously held, in the case of Latapie-Vigneaux v. Askew Saddlery Company, 193 Mo. 1, that the statute in question was enacted for the safety of employees in large factories, and not for the purpose of protecting the person whose duty it was to operate or run an elevator, while so doing. In the last mentioned case the plaintiff at the time of the accident was on the fourth floor of the building in which he worked and went to the elevator shaft, and, finding that the elevator was two or three floors below, reached into the shaft and pulled the rope to bring the elevator up to the fourth floor. In doing so he fell into the shaft and was injured. It was alleged that his fall was due to the fact that the elevator shaft was not guarded as required by the statute. The Court held that as it was his business to operate the elevator the statute did not apply to him.

WHETHER ONE LEAVING DYNAMITE CAP ON ROAD SHOULD HAVE ANTICIPATED ACCIDENT TO CHILD HELD QUESTION FOR JURY.—In the case of Terrell v. J. F. Giddings & Son, Georgia Appeal, 112 S. E. 914.

"The declaration in attachment, filed in behalf of a 14-year-old girl, for damages from personal injuries, in effect alleged that while the defendant was engaged in grading and soiling a public road its vice principal in charge of the work negligently and wantonly and without necessity placed and left in and near the mouth of a public sewer on a described public road a highly explosive and dangerous dynamite cap, which was attractively wrapped in paper and placed in a small box, that a named boy, 12 years of age, attracted by its appearance, but because of his tender years unaware of its nature or dangerous character, carried it to the home of the petitioner, who, being also of tender years and unaware of its dangerous character, took the dynamite cap from the boy, and in playing with it scratched it with a pin, causing an explosion, which resulted in the injuries sued for. The petition charges negligence (1) in thus placing the dynamite cap where persons might discover it and receive injuries therefrom; (2) in not properly safeguarding the sewer where it was placed, so that the cap could not be removed by children; and (3) in carelessly, wantonly, and without necessity so placing the cap in total disregard of life. The court sustained a general demurrer to the petition. Held:

"If, as contended by counsel for the defendant in error, the defendant did not owe the plaintiff any legal duty which it neglected to perform, no action could be maintained for negligence on its part. Actionable negligence does not exist, in the absence of the breach of some legal duty. Savannah, etc., Ry. Co. v. Beavers, 113 Ga. 398, 39 S. E. 82, 54 L. R. A. 314. The entire absence of blame on the part of a plaintiff does not, therefore, necessarily establish a fault on the part of a defendant, since an accident may be a mere casualty, for which no one is to blame. Chenall v. Palmer Brick Co., 117 Ga. 106, 43 S. E. 443; Atlanta Coca-Cola Bottling Co. v. Danneman, 25 Ga. App. 43, 102 S. E. 542. But all persons are presumed to anticipate the reasonable and natural consequences of their own conduct, and it was a question for the jury whether the defendant ought to have anticipated an injury such as is alleged in the petition as a reasonable and natural consequence of its alleged conduct in placing the attractively wrapped and highly explosive dynamite cap in and near the mouth of a public sewer on a public highway, where it was alleged it reasonably might and in fact did attract the attention and incite the curiosity of children. Wallace v. Matthewson, 143 Ga. 236, 84 S. E. 450; Mills v. Central of Ga. Ry. Co., 140 Ga. 181, 78 S. E. 816, Ann. Cas. 1914C, 1098; Mayor etc., of Unadilla v. Felder, 145 Ga. 440, 89 S. E. 423, L. R. A. 1917A, 1295. The question cannot be determined as a matter of law, under the rulings which have restricted the right of trespassers on private property to recover for injuries."

INSTALLMENT CONTRACTS—NON-PERFORMANCE. REFUND OF INSTALLMENTS PAID

The action lately decided in the Court of Session *Cantiere San Rocco S. A. (Shipbuilding Co.) v. Clyde Shipbuilding & Engineering Co., Ltd.*,[1] discloses a divergence in judicial opinion which should make the case an interesting one, when, as is likely, it comes before the House of Lords. It arose out of a contract by a Scottish engineering company to make and deliver to an Austrian company a set of marine engines —as regards certain parts on or before February 15th 1915, and as regards the remaining parts on or before April 30, 1915. The contract was completed by the signature of the parties on May 4, 1914, and immediately passed into the stage of performance. The contract price was £11,550, but of this amount a first installment of 20 per cent was payable by cash in London on signing the contract. Accordingly the Austrian buyers, on May 20, 1914, paid a sum of £2,310 to the makers. The contract also contained a number of detailed provisions—to be carried out immediately on the contract being signed—with regard to the submission on the part of the makers, and the adjustment by the Austrian company, of drawings, plans, and details necessary for regulating the construction of the ship suitably for the reception of the engines when delivered. These provisions were duly implemented by the makers before August 12, 1914, when war was declared between this country and Austria; but no part of the engines had been made or put together by that date, with the result that no property in the engines or in any part of them had passed to the Austrian company.

The effect of the outbreak of war between the countries of which the makers and the buyers were respectively nationals —while the contract was in course of performance—was to render further performance of it illegal, as involving intercourse with the King's enemies and as being detrimental to the interests of the makers' country, and so to exonerate or discharge the parties from their respective obligations for such further performance; but whatever rights had accrued under the contract before the outbreak of war remained unaffected, except that the right to sue in respect thereof was suspended during the war. While the contract was discharged as regards further performance, it was not wholly annulled. This was accepted as the law applicable to the case of supervening war condition in the case of *Penney v. Clyde Shipbuilding and Engineering Co., Ltd.*,[2] and is in accordance with the decisions and opinions in a number of cases in the English courts and in the House of Lords, of which it is enough to mention *Zinc Corporation v. Hirsch*[3] and *Ertel Bieber & Co. v. Rio Tinto Co., Ltd.*[4]

The present action was brought by the Austrian buyers—now an Italian company —for refund of the installment of price paid on May 20, 1914. The plaintiffs maintained that, in consequence of the contract having become incapable of fulfillment, they were entitled to recover the money paid by them to the defenders in terms of said contract. The defendants, however, contended that rights acquired under the contract could not be disturbed by the termination of the contract owing to a cause for which neither party was responsible, and that they were therefore entitled to retain the payment made to them.

In support of their contention the defendants relied upon a number of cases. In *Anglo- Egyptian Navigation Co. v. Rennie and Another*,[5] a firm of shipbuilders had contracted to repair a ship with materials partly new and partly old. The price of the work was to be £5,800, to be paid in

(1) 1922, 1, S. L. T. 479.

(2) 1919. S. C. 363.
(3) 1915, 1 K. B. 541.
(4) 1918, A. C. 260.
(5) 1875, L. R. 10, C. P. 271.

three installments as the work progressed. The ship was lost after one of the installments had been paid and after the new machinery contracted for was ready to be fixed on board. A second installment was subsequently paid. The plaintiffs in the action claimed delivery of the machinery, and, as this was refused, brought an action for the detention of the same or for recovery of the £4,000 which they had paid. It was held that the contract was an entire and indivisible one for work to be done upon the plaintiff's ship for a certain price, from further performance of which both parties were released by the loss of the ship; that the property in the articles manufactured was not intended to pass until they were fixed on board the ship; and that consequently the plaintiffs were not entitled to the boilers and machinery, nor to recover the £4,000 paid as upon a failure of consideration.

The same doctrine is more clearly illustrated in the series of cases which may be described as the Coronation cases. Contracts were entered into under which high prices were agreed to be paid for the temporary use of premises from which the Coronation procession might be seen. On the postponement of the Coronation owing to the King's illness, a number of legal questions arising out of these contracts came before the English courts for decision. It was held that the taking place of the processions on the date originally fixed along the proclaimed route was regarded by both contracting parties as the foundation of the contract, and that the non-existence of this state of things going to the root of the matter and essential to the performance of the contract excused both parties from further fulfillment of the contract.

Where, however, money had been paid prior to the postponement of the Coronation it was held that it could not be recovered back. In *Blakeley v. Muller & Co.*, decided by a Divisional Court in England, and reported in a footnote at page 760 of (1903) 2 K. B., Channell J. said. "All that can be said is that, when the procession was abandoned, the contract was off, not that anything done under the contract was void. The loss must remain where it was at the time of the abandonment. It is like the case of a charter-party where the freight is payable in advance, and the voyage is not completed, and the freight therefore not earned. Where the non-completion arose through impossibility of performance the freight could not be recovered back."

In *Chandler v. Webster.*[6] Romer L. J. stated the law in general terms. "Where there is an agreement which is based on the assumption by both parties that a certain event will in the future take place, and that event is the foundation of the contract, and through no default by either party, and owing to circumstances which were not in the contemplation of the parties when the agreement was made, it happens that, before the time fixed for that event, it is ascertained that it cannot take place, the parties thenceforth are both free from subsequent obligation cast upon them by the agreement; but, except in cases where the contract can be treated as rescinded *ab initio* any payment previously made, and any legal right previously accrued according to the terms of the agreement, will not be disturbed."

On the other hand in *Watson & Co. v. Shankland and Others,*[7] Lord President Inglis said (p. 152): "There is no rule of the civil law, as adopted into all modern municipal codes and systems, better understood than this—that if money is advanced by one party to a mutual contract, on the condition and stipulation that something shall be afterwards paid or performed by the other party, and the latter party fails in performing his part of the contract, the former is entitled to repayment of his advance, on the ground of failure of consid-

(6) 1904, 1. K. B. 493, at p. 501.
(7) 1871, 10, M. 142.

eration. In our own practice these remedies are represented by the action of restitution and the action of repetition. And in all systems of jurisprudence there must be similar remedies, for the rule which they are intended to enforce is of universal application in mutual contracts.

"If a person contract to build me a house, and stipulate that I shall advance him a certain portion of the price before he begins to bring his materials to the ground, or to perform any part of the work, the money so advanced may certainly be recovered back if he never performs any part, or any available part, of his contract. No doubt, if he perform a part and then fail in completing the contract, I shall be bound in equity to allow him credit to the extent to which I am *lucratus* by his materials and labor, but no further; and if I am not lucratus at all, I shall be entitled to repetition of the whole advance, however great his expenditure and consequent loss may have been."

Now in the case of the *Cantiere San Rocco*, two judges were in favor of ordering the defendants to refund the installment paid, but the majority were of opinion that they were entitled to retain the money. There is thus raised a question of law of great practical importance and professional interest, the solution of which is not easy and either side of which may be supported with much argument and authority. Meantime the law stands that where a contract installment has been paid before the contract is made void by an event which parties could not have foreseen, it cannot be recovered.

DONALD MACKAY.

Glasgow, Scotland.

HE HELPED

Sunday School Teacher: "Can you tell me who made you, Joseph?"

Joe: "God made part of me."

Sunday School Teacher: "Why what do you mean by that?"

Joe: "He made me real little, and I just growed the rest myself."—Practical Druggist.

STARE DECISIS. APPLICATION OF THE RULE

That which follows is a plea that the courts refrain from a rigid adherence to adjudicated cases, rather than a treatise upon the general doctrine. It is somewhat in the nature of a protest against the seeming tendency of some of our courts to indiscriminately give to adjudicated cases the full force of authoritative law. Court decisions are justly entitled to be so considered whenever they are so persuasively convincing as to be practically above and beyond adverse criticism.

Under this doctrine, unlike that of res judicata, one of the controlling reasons for a judicial decison to stand as a precedent in subsequent litigation, seems to be its persuasive force, based upon the degree of sound reason which leads to the conclusion reached, that reason being, in its turn, founded upon a sound and well-established principle of law.

It has been well said that "it is more important as to far reaching juridical principles that the court should be right, in the light of higher civilization, later and more careful examination of authorities, wider and more thorough discussion, and more reflection upon the policy, of the law, than to be merely in harmony with previous decisions."

Of course, if the controlling facts in the adjudicated case offered as a precedent, are quite like those in the subsequent case, and the correct principles of the law were properly applied thereto, it may well be followed as a precedent. To do so contributes to the certainty, uniformity and stability of the law, which is a principle which lies at the foundation of the doctrine of stare decisis.

There are decisions to be found to the effect that decisions based upon an assumption of facts and conditions leading to the conclusion reached, are as effectually decid-

ed as are the ultimate questions determined —in other words, that judicial dicta is entitled to become a precedent. That does not seem to have become a general rule, however.

It appears that the courts have, in many cases, preferred to remain out of harmony with the best judicial thought and reason, rather than to override a manifestly erroneous decision. In some of these cases it has appeared to the court that, to override a precedent, would be to disturb rights acquired thereunder, but in a large number of them a change which would settle the law of the jurisdiction aright would not have been detrimental to any one. The better rule is that, in such a case, the decisions should be promptly overruled, and that, in the other cases, they should also be overruled, unless the injury to result from refusing to follow it as a precedent will be greater to the whole community than can possibly result from adhering to it.

It was said by Chancellor Kent that "it is probable that the records of many of the courts of this country are replete with hasty and crude decisions; and such cases ought to be examined without fear and revised without reluctance, rather than to have the character of our law impaired, and the beauty and harmony of the system destroyed by the perpetuity of error."

It has been judicially said that the doctrine of stare decisis "does not apply to a case where it can be shown that the law has been misunderstood or misapplied, or where the former decision is clearly contrary to reason. The authorities are abundant to show that, in such cases, it is the duty of the court to re-examine the question."

In Ruling Case Law it is said that: "If judges were all able, conscientious, and infallible; if judicial decisions were never made except upon mature deliberation, and always based upon a perfect view of the legal principles relevant to the question in hand; and if changing circumstances and conditions did not so often render necessary the abandonment of legal principles which were quite unexceptionable when enunciated, the maxim stare decisis would admit of few exceptions. But the strong respect for precedent which is ingrained in our legal system is a reasonable respect which balks at the perpetration of error, and it is the manifest policy of our courts to hold the doctrine of stare decisis subordinate to legal reason and justice, and to depart therefrom when such departure is necessary to avoid the perpetration of pernicious error."

Is it not true, however, that many, indeed very many, of our courts fail to realize the perniciousness of error in law? All error is pernicious in some degree, but, unless it is apparent that it carries the germ of absolute destruction, the tendency of the courts seems to be to minimize the wrong which inheres in the recognized error in the decision. In other words, some courts seem to have a very greatly exaggerated opinion of their duty to precedent, as such. Sacrosanctity does not inhere in any judicial opinion. It contains no element of divinity. It is of at least equal, if not greater, importance that the law should be uniform than to be merely stable in a locality, especially when such stability prevents the desired uniformity.

The common sense of the average man will enable him to so conduct his affairs with his fellow men as to keep in quite perfect accord with the rules of law defined and applied to like matters by decisions of the courts, if such decisions are in accord with abstract justice and right—in other words, with sound principles of law—although the man may be in ignorance of the existence of such rules. On the other hand, however, his sound sense of abstract and concrete right will not enable him to keep in harmony with decisions not so founded. Hence it seems that courts should disregard, or overturn, decisions of the latter

class, rather than that they should become, or remain as, precedents, and the error be thus repeated and confirmed.

It seems to the writer that the universal rule should be—and that it should be strictly adhered to in practice—that a manifestly erroneous decision should not be adhered to merely because of the possibility that the reversal of it may be productive of more general mischief and injury than might possibly ensue from disregarding or overruling it. To justify an adherence to error the inordinate mischief incident to the correction of it should be plainly manifest. A decision should never be followed as a precedent where the only reason for so doing is that the court had theretofore so decided.

In a case which was under examination a few days since, it appeared that the court had referred, with manifest approval thereof, to cases theretofore decided by it, to the effect that the inadvertent omission of a revenue stamp invalidated the instrument upon which it should have been placed, notwithstanding the fact that those deisions had been expressly overruled by the same Court, about fifty years prior thereto. The writer of the opinon therein delivered seemed to have fallen into the deep rut of rigid adherence to precedent, the limiting influence of which caused him to follow, without restriction, any judicial utterance which seemed to him to be "in point." The astonishing adherence which that Court gave to its seemingly fixed belief in the great, grand, mighty, and immutable divinity, precedent, even after the idol had been shattered, and irrespective of the fact that to be an indiscriminate follower of adjudicated cases may require one to tread the tortuous labyrinth of unreason, is still a source of perplexing wonder.

In that case, the reasoning adopted by the Court, or rather, by following "precedent" without reason, the Court was led to hold that, although the negotiable instruments law is silent as to revenue stamps, the failure of the purchaser of such an instrument to discover that the same was unstamped until after the purchase was completed, is conclusive proof, raising a legal conclusion, that he did not make the purchase in good faith. A failure to notice the omission of a revenue stamp, the presence of which is not made a requisite to the negotiability of the instrument, is thus made to impute bad faith to a subsequent purchaser of it, against which imputation evidence to the contrary is powerless, if not prohibited. Thus, in inadvertent oversight, or a wilful refusal to perform a duty which the revenue law imposes upon the maker of a negotiable instrument, is made to work a benefit to him and an injury to the purchaser thereof upon whom no such duty was imposed. That seems to furnish living proof of the truth of the aphoristic statement of Shakespeare that: "A little learning is a dangerous thing."

To determine whether the judicial decision of a legal question should necessarily be followed, its vigor, energy, and power as authority should, as a main factor of determination, be measured by the degree of clear, consistent and controlling reason which logically flows from acceptable premises to the announced conclusion. Such a decision is of value, generally speaking, only in proportion to the extent of the sound sense which dominantly leads to the conclusion reached. Unless it has the illuminative and persuasive force which convinces the intelligent and reflective reason of the thoughtful judge of the law, it is at least fruitless, if not perniciously sinister, and should, therefore, in either event, be rejected.

A. MOORE BERRY.

Lincoln, Neb.

Policeman: Hey, what's in tnat bottle sticking out of your pocket?
Pedestrian: Whisky. What's that in that bottle sticking out of yours?
Policeman: Just plain ginger ale.
Pedestrian: Let's make a highball.
Policeman: Sure!—New York Globe.

BILLS & NOTES—FORGERY—ESTOPPEL.

FIRST NAT. BANK OF UNION BRIDGE, MD., v. WOLFE ET UX.

117 ATL. 898.

Court of Appeals of Maryland.
February 8, 1922.

Where a wife, whose name to certain notes was forged by her husband, after learning of the forgery, failed to warn the payee which had lent money on the notes to her husband to use in his business, and took over and disposed of property and assets of her husband, the proceeds of which she applied to payment of other notes of her husband, which she had signed, her conduct in failing to warn the payee of the forgery and in taking possession of the property so as to defeat payee of the notes in securing the property estopped her from setting up the defense of forgery.

F. Neal Parke, of Westminster (Ivan L. Hoff and Bond & Parke, all of Westminster, on the brief), for First Nat. Bank of Union Bridge, Md.

Frank L. Stoner, of Frederick (Edward O. Weant, of Westminster, on the brief), for W. Scott Wolfe and wife.

PATTISON, J. On the 10th day of January, 1921, a judgment by confession was entered in the circuit court for Carroll county in favor of the First National Bank of Union Bridge, Md., against W. Scott Wolfe and Meda E. Wolfe, his wife, upon the power contained in a note for the sum of $1,500, dated the 15th day of June, 1921, payable in six months thereafter, to said bank, with the names of W. Scott Wolfe and Meda E. Wolfe attached thereto, as makers. And on the 19th day of the same month (January, 1921) another judgment was entered in that court in favor of said bank against Wolfe and his wife upon the power in a like note, dated July 14, 1920, for said sum, payable as the other, in six months thereafter, to said bank, with the names of Wolfe and his wife attached thereto.

On the 14th day of April, 1920, Meda E. Wolfe, the wife, filed a motion in each of the two cases, asking that the judgment entered therein against her be stricken out, because, as she alleged therein, the name, "Meda E. Wolfe," appearing to each of said notes, was not signed by her or by her authority, but was a forgery. The two cases, upon the motions filed, were heard together by the court. In the first of these cases the court granted the motion to the extent of reducing the judgment of $1,500 entered therein against Meda E. Wolfe to $1,283.66, and in the second case the motion was granted, and the judgment therein against Meda E. Wolfe, for $1.500 was stricken out.

In the first case both Meda E. Wolfe and the bank appealed from the order of the court, and from the order in the second case the bank appealed. The appeal and cross-appeal in the first case, No. 112 of the October term of this court, and the appeal in the second case, No. 113 of the same term, are before us in one record.

It is in evidence that on or about the 15th day of December, 1919, W. Scott Wolfe obtained from the First National Bank of Union Bridge a loan for the sum of $1,500 upon the faith or credit of himself and wife, as testified to by him, after he had given to the bank a statement of the specific property owned by him and his wife. To secure the loan Wolfe gave to the bank a note for said sum, dated the 15th day of December, 1919, payable to the bank six months thereafter. To which note was attached the name of himself and wife. Upon the receipt of the money obtained on said note, Wolfe opened an account with the bank in the name of "W. S. Wolfe & Co." On the 14th day of January, 1920, Wolfe obtained a second loan from the bank for the same amount, and to secure that loan he gave to it a like note for $1,500, payable in six months thereafter, with the name of himself and wife attached thereto as makers. These notes became due on the 19th of June and the 14th of July, 1920, respectively, and, not being paid when due, they were renewed for another six months by notes for the same amount, purporting to have been signed by Wolfe and wife as makers. It was upon these last-mentioned notes falling due on the 15th day of December, 1920, and the 14th day of January, 1921, respectively, that the judgments involved in this case were entered.

At the time Wolfe obtained said loans from the bank and prior thereto he was conducting a coal business in the town of New Windsor, Carroll County, Md., about four miles from Union Bridge, and at which place he resided with his family. On July 13, 1920, Meda E. Wolfe wrote to the First National Bank of Union Bridge saying:

"Advise me if you hold any notes for which I am given as security; also wish to advise you to accept no notes on which my name appears as security."

She was induced to write the above letter because, as stated by her husband, she was told by a woman of her neighborhood "that some of the people did not have as much money as was

given to them." This, he said, made her a "little suspicious," and "she wrote to different banks to know if her name was on any paper." This letter Mr. Olmstead, cashier of the First National Bank of Union Bridge, said was received at the bank after the renewal note of July 14th was delivered to the bank; that on the day following its receipt he wrote Mrs. Wolfe, telling her they had two notes, each for the sum of $1,500, and he gave to her the date of each note. The letter to her from the bank was misplaced or lost; at least it does not appear in evidence; but Mrs. Wolfe and their son, James, who was at the time engaged in the drug business at New Windsor, both testified that it was said in the letter to her that she was on notes therein amounting to $1,600, while her husband testified that the letter stated that there were two notes in the bank upon which her name appeared amounting to $1,500.

Upon the receipt of the letter from the bank Mrs. Wolfe sought the counsel of Mr. Stoner, a well-known attorney of the Frederick bar, and her attorney in this case, and, after telling him of the signing of the notes by her husband without her knowledge or authority, she was advised by him to have her husband turn over his business to her to protect her against any loss she might sustain by reason of such alleged forgeries. This advice was received a few days, or a short time only, after the receipt of the letter from the bank, and, pursuant to the advice of her attorney, a paper writing was prepared by her son, which was referred to by the witnesses as a power of attorney, authorizing the son to take over and conduct the coal business of the father. This paper was signed by W. Scott Wolfe, and the business was taken over by the son, in the management of which he was materially assisted by his mother.

About a week after executing the power of attorney, Wolfe left his home and went to the cement plant at Union Bridge, where he worked as a laborer for a week or two, when he was taken sick and returned to his home, and upon his recovery, about two weeks thereafter, he went back to the coalyard, as his son had said "he did not want anything more to do with it." In the meantime much of the coal had been sold, and the money received therefor, amounting to $1,283.66, had first been deposited in the First National Bank of New Windsor to the account of Meda E. Wolfe, and thereafter applied by her to the payment of notes in that bank, among them two notes, one for $500 and the other for $300, which she admitted she had signed for her husband. How long W. Scott Wolfe thereafter conducted the coal business, and what he realized therefrom is not shown from the record, although it is disclosed by it that at the time the case was heard in the court below, in May, 1921, and for six weeks prior thereto, W. Scott Wolfe was not living at home with his family, but was employed as a laborer in the cement plant at Union Bridge.

In speaking of the letter of Mrs. Wolfe to the bank dated July 13, 1920, Mr. Olmstead, the cashier, said that upon receipt of it he thought it was "peculiar" that she should inquire "whether such notes were there," but when she failed to reply to his letter he then felt that everything was all right; and it was not until March, 1921, when these proceedings were instituted in the court below to strike out the judgments, that he or the officials of the bank had any information of the claim made by Mrs. Wolfe that she had not signed, or authorized her husband to sign, the notes upon which the judgments were entered.

About the time these notes became due the bank learned of the negotiations going on for the sale of certain real estate owned by Mrs. Wolfe in Union Bridge, and it was this fact that caused the bank to enter up judgments on the notes. The entry of the judgments, it would seem, was not known to Mrs. Wolfe until discovered by the attorney, employed by the purchaser of the property to examine her title thereto preparatory to its conveyance to the purchaser; and then it was that the proceedings to strike out the judgments were instituted.

It is also in evidence that this property, which was about to be sold by Mrs. Wolfe at and for the sum of $1,900, was sold some years before by Mr. Wolfe, as trustee, and at the sale made by him Mrs. Wolfe was returned as the purchaser of the property, presumably for the sum of $1,300 or thereabout, as it is disclosed by the record, Mr. Wolfe paid $1,000 of the purchase money and his wife $300. In the sale of it by Mrs. Wolfe, it was agreed by her and her husband that he should receive of the purchase money $1,000 to reimburse him for what he had paid upon the purchase money at the sale when she was returned the purchaser. The sale, however, by her, as well as the agreement with her husband that he should be paid $1,000 of the purchase money, was blocked, because of the liens on the property resulting from the entry of said judgments.

At the hearing upon the motions to strike out the judgments, Wolfe, who at 12 o'clock at night was called by his wife and son from his

bed, where he at the time was asleep, to sign the power of attorney, turning over his business to his son, and who also, at his wife's request, pending the sale of the Union Bridge property, after she had learned of the entry of the judgments, had written a letter to Mr. Stoner confessing his guilt in the forgery of the notes, testified that he, and not his wife, signed the notes upon which the judgments were entered, as well as the notes of which there were renewals, and that he had no authority from her to sign them. Mrs. Wolfe, the wife, also testified to the same effect. It was also the opinion of the son that the name of his mother attached to the notes was not in her handwriting.

[1] The law applicable to cases of this character is that one by his conduct or even by mere silence may estop himself from defending against the payment of a note on the ground that the signature thereto was a forgery if it be shown that the holder in relying thereon was misled thereby to his injury, provided it be further shown that it was the duty of the party, and he had an opportunity, to speak. Hardy & Bros. v. Chesapeake Bank, 51 Md. 562, 34 Am. Rep. 325; Shinew v. First National Bank, 84 Ohio St. 297, 95 N. E. 881, 36 L. R. A. (N. S.) 1006, Ann. Cas. 1912C, 587; Viele v. Judson, 82 N. Y. 32; Wiser v. Lawler, 189 U. S. 260, 23 Sup. Ct. 624, 47 L. Ed. 802; Dominion Bank v. Ewing, 7 Ontario L. Rep. 90, and affirmed in 35 Can. Sup. Ct. 133; and others; or as stated by Mr. Daniels in his work on Negotiable Instruments, vol. 2, § 1353:

"If a person whose name has been forged knows that the holder, the bank, is relying upon the forgery, he will not be permitted to remain silent to its injury."

[2] If the name of Mrs. Wolfe upon the notes was forged by her husband, she knew of it as early as July, 1920, for she in her testimony stated that she was told by the letter from the bank that her name appeared upon notes in that bank amounting to $1,600; and, while she does not say that she was told that the notes upon which her name appeared were those placed there by her husband, her subsequent conduct disclosed that she so undersfood it; and whether or not she was mistaken in her recollection as to the amount of said notes is not material in the decision of this case. But it is more than probable that she was mistaken, for at the time the letter was written to her the second renewal note of July 14, 1920, had been left at the bank, and we can conceive of no reason for it stating the amount of the notes upon which her name appeared with her husband to be less than it really was. The information she acquired by the letter was promptly furnished her at her request, as she asked to be advised "if the bank had any notes for which she was given as security."

Upon the receipt of her letter the bank might well have thought that she had some reason for seeking the information, and, as its cashier said, he thought it "peculiar" that she should have asked for it. But, if her inquiry caused the bank any apprehension as to the genuineness of her signature, it was naturally allayed by her silence thereafter. When her inquiry was answered, and she was told that her name appeared upon notes in the bank. which she says were forgeries, it was her duty to inform the bank of that fact, which she had full opportunity to do, but did not do it. Her reason for not doing it is disclosed by her subsequent conduct, for had she written to the bank, telling it of the alleged forgeries of her husband, she would have been prevented in all probability from following the course she pursued of taking over and disposing of the property and assets of her husband, and applying the proceeds thereof to the payment of those notes of his, which she admitted she had signed with him, and the payment of which she could not escape by the defense of forgery.

We need not, we think, discuss to any extent the evidence with the view of showing that her silence and conduct misled the bank to its injury. The bank was relying upon the forged note for the money that it had loaned to her husband upon both the credit of him and her. She, instead of informing the bank of the alleged forgeries, so that it could have taken steps at that time towards protecting the bank against the loss resulting from them, took over the only assets of her husband, and disposed of so much of them as was necessary to the payment and satisfaction of other notes, upon which she was security for her husband upon her own admission, and, when this was accomplished, she, indifferent to the interest of her husband's creditors generally, permitted him to dispose of the balance of his assets. without regard to the application of the proceeds received therefrom.

It is clear to us, from the facts of this case, that it was the duty of Mrs. Wolfe when told by the bank that her name appeared upon notes held by it, to have informed the bank of the alleged forgeries, and that her silence, when she could have spoken, and her conduct thereafter, upon which the bank relied, misled it to its injury, and that she by such silence and conduct was estopped from raising the question of her liability because of said alleged forgeries.

The judgment in each of the cases should, we think, stand as it was entered, and consequently the court below in our opinion erred in reducing the first judgment as it did, and in striking out the second, and we will therefore reverse the order in each case.

Both orders of the court below reversed, and the judgment in each case to stand, as entered originally; Mrs. Wolfe to pay the costs in each case.

NOTE.—*Estoppel to Plead Forgery as Defense.*—In Shinew v. First National Bank, 84 Ohio 297, 95 N. E. 881, 36 L. R. A. (N. S.) 1006, the rule is laid down that one may by conduct, statements, or silence estop himself from claiming that his signature is a forgery, but before he can be estoppd by mere silence, facts must be alleged and proved showing a duty and opportunity to speak, that he knew or had reason to believe that the holder of the forged instrument would rely on his silence, and that the holder in fact did rely on his silence and was injured thereby.

In Barry v. Kirkland, 6 Ariz. 1, 52 Pac. 771, 40 L. R. A. 471, it was held that estoppel was not a good reply to a defense of forgery in an action on a promissory note, where it appeared that the plaintiff had not been in any way prejudiced by conduct of the defendant which the plaintiff alleged operated as an estoppel.

In this connection see Ritchie County Bank v. Bee, 62 W. Va. 457, 59 S. E. 181.

"When one of two innocent parties must suffer loss by reason of the wrongful acts of a third party, the rule is almost universal that the party who has made it possible. by reason of his negligence. for the third party to commit the wrong must stand the loss. In this case, if the appellants had notified the banks who were handling said drafts that R. L. Walsh was forging the names of the farmer payees in order to get the money on the said drafts from the banks, the loss which was sustained by the passing of said drafts would never have occurred. This they did not do, but remained quiet so long as they thought they were getting the benefit of the money that was paid on said drafts, and only complained when they learned that their agent, Walsh, was taking advantage of the position in which they had placed him by his appointment as their agent, with authority to draw drafts, by drawing drafts to farmers who had not delivered grain. and indorsing the names of such farmer payees upon the drafts and drawing the money from the banks thereon and appropriating the same to his own use. We think it clear if the appellants enjoyed the benefits which accrued to them from the business done by Walsh so long as it was done honestly, that when Walsh became dishonest and appropriated the money which he drew by reason of forged indorsements they should suffer the loss which followed his rascality, and not be permitted to unload such loss upon the banks that innocently handled said drafts." Bartlett v. Chicago First National Bank, 247 Ill. 490. 93 N. E. 337.

ITEMS OF PROFESSIONAL INTEREST

DEFENSE OF THE LEVER ACT AS A CIVIL STATUTE.

Mr. Edgar Watkins, of Atlanta, Georgia, has favored us with a copy of his brief which accompanies a petition to the Supreme Court of the United States for a Writ of Certiorari, and calls attention to that portion of the brief in which he and his associate contend for the validity of the Lever Act as a civil statute. That portion of his brief is as follows:

Are contracts made in violation of the Lever Act valid? Is rule 6 of the Food Administration forbidding hoarding of necessities a proper regulation under the Lever Act? Answers to these questions will decide whether a seller of a necessity can enforce through the courts contracts made in violation of the above Act or Regulation.

The matter of the constitutionality and effect of the Lever Act as a civil statute has never been passed on by this court; the decision of the Circuit Court of Appeals will effect in large measure, cases pending throughout the United States, in matters relating to hundreds of thousands of dollars. At the present time, it appears that on account of the coal strike, the government will take charge of the distribution of coal and the same issues herein involved are apt to arise in the future. Future business would be assisted if the public should know the meaning and effect of this or similar statutes and regulations upon civil contracts.

The decisions of the Circuit Court of Appeals for the Fifth Circuit on the effect of the Lever Act and rulings of the Food Administration are in conflict. In J. N. Pharr & Sons vs. C. D. Kenney Co., 272 Fed. 37, it appears at page 39 that the lower court charged the jury:

"that the government through the Food Administration had fixed the margin of profit for the dealers as already stated and instructed them to consider this fact when arriving at the measure of damages."

which charge was approved by the Circuit Court of Appeals at page 41 as follows:

"The amount of damages was properly left to the jury and there is nothing in the instructions which could possibly have harmed the defendant. The Food Administration could not under the provisions of the Act of Congress * * * * which created it, arbitrarily fix the price at which future sales could be made. That remained a question finally to be decided by a jury as it was in this case, under instructions that appear to be entirely correct."

thus holding that a jury should determine the price at which future sales should be made. This court refused a Writ of Certiorari in the Pharr Case.

In its decision in the present case, the same Circuit Court of Appeals said that

"defendant further pleaded that under the Lever Act the United States controlled the price of sugar and that the President had fixed a profit of 1c per pound on sales of sugar at wholesale and that therefore the only profit in contemplation of the parties was 1c per pound. We think this defense was properly stricken on demurrer under the ruling of this court, in Pharr & Sons vs. Kenney Co., 272 Fed. 37, 41."

Petitioner does not understand the basis for the statement of the court that the defenses of the Lever Act were properly stricken on demurrer under the ruling of this court in Pharr & Sons vs. Kenney Company.

In the case of Edgar A. Levy Leasing Co. vs. Siegel, reported in 66 L. ed. 326 at page 330 this court said:

"The standard of the statute is as definite as the just compensation standard adopted in the fifth amendment to the Constitution and therefore ought to be sufficiently definite to satisfy the Constitution. U. S. vs. L. Cohen Grocery Co., 255 U. S. 81, 65 L. ed. 515, * * * * dealing with definitions of crime, is not applicable."

thus indicating to petitioner that this court regards the Lever Act effective and constitutional as a civil statute.

See Fannon vs. U. S., 276 Fed. 109.

DELAY IN PUBLISHING OFFICIAL REPORTS OF U. S. SUPREME COURT

Last July, Congress passed an act (Public No. 272) providing for the publication of the Official Reports of the Supreme Court in the Government Printing Office and for their sale to the public at cost of production, including a part of the appropriation made for the maintenance of the Reporter's office. This did away with the method of publication through contracts between the Reporter and private publishing houses, which had obtained from the beginning. The last contract of that kind expired with the publication of Volume 256, which completed the reports for the October, 1920, term. The letting of a new contract to cover the opinions of the 1921 Term was impracticable, owing to the pendency of the legislation, to the expectation that it would be enacted long before it actually was, and to definite indications that, when enacted, it would supersede the contract method.

For various reasons, incident to the ending of the old contract and the legislative change, editorial work on the opinions of the 1921 Term was seriously delayed. Time also was consumed by administrative preliminaries under the new law, and in making necessary preparations in the printing office. Notwithstanding this, however, gratifying progress has been made. The reports of these opinions will be contained in three volumes to be numbered 257, 258 and 259, all of which, it is confidently expected, will be published in bound and pamphlet form before the close of the year.

The act provides for advance parts as well as bound volumes, when ordered by the Chief Justice. It was decided to issue a small edition of these pamphlets, four to a volume, sufficient to meet the requirements of public officials and of those lawyers who may desire them notwithstanding the delay. These, as heretofore, are made from the plates used in the final volumes and, therefore, correspond with them in page numbering. It is believed that their publication will not delay the bound volumes, and it is known that the prompter dissemination of the opinions thus made possible will be of convenience to many, besides helping to detect errors in the plates. Two numbers, containing one-half of the opinions of Volume 257, have been issued at this writing. The price is twenty-five cents per number. The bound volumes will follow the corresponding pamphlets as soon as the plates can be re-examined and corrected and the tables and indexes completed and plated. According to present estimates, the price of bound volumes will be about two dollars and ten cents each, possibly a little more, possibly a little less. It will be fixed in the near future when the work has progressed somewhat farther.

Especial attention is directed to the fact that it will not be necessary to send in a separate order for each pamphlet or volume purchased. Standing orders with advance deposits will be received by the Superintendent of Documents, Government Printing Office, Washington, D. C., and the publications will be mailed, as issued, to the addresses given, as long as the amounts kept on deposit suffice to pay for them.

My lawyer said the case I had
Was strong—it now appears
He must have meant 'twas durable
And would last for many years.

—Boston Transcript.

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Animals**—Reasonable Regulation.—The provision of Pub. Acts 1919, No. 339, § 17, requiring the sheriff to kill on complaint from the prosecuting attorney any dog that is in the habit of running at large, which is defined, as applied to unconfined stock, as strolling without restraint, goes beyond reasonable regulation, and is invalid.—Finley v. Barker, Mich., 189 N. W. 197.

2.—**Attorney and Client**—Fee.—An attorney at law cannot recover the whole or any part of a contingent fee upon an express contract of employment, where the contingency provided for by the contract has not been brought about, although the entire work or service of the attorney has been duly performed, and although the possibility of the contingency being brought about is prevented by the subsequent wrongful conduct of the person for whose benefit the services were engaged and with the subsequent continuing passive acquiescence of the client. Whether the undertaking would have proceeded to a successful or unsucessful final determination had the client not passively acquiesced in the wrongful conduct is necessarily merely conjectural, and could not be considered in determining the question of liability.—Stephens v. Fulford, Ga., 112 S. E. 894.

3.——Fee.—In determining the compensation recoverable by attorneys for services rendered under an employment fixing no definite compensation, the amount and character of the services, the responsibility imposed, the labor, time, and trouble involved, the character and importance of the matter in which they were rendered, the amount of money or the value of property affected, the professional skill and experience called for, the character and standing of the attorneys in their profession, and whether or not the fee is absolute or contingent, are to be considered.—Campbell County v. Howard, Va., 112 S. E. 876.

4. **Automobiles**—Agency.—That an automobile was purchased for the customary conveyance of the family does not make a son driving the automobile for his own personal benefit and enjoyment the servant or agent of his father so as to render his father liable for his negligence.—McGowan v. Longwood, Mass., 136 N. E. 72.

5.——Degree of Care.—Though plaintiff's nine-year-old son was negligent and was of sufficient age to have realized the danger of running into a main thoroughfare frequently by automobiles without looking for approaching automobiles, defendant was not justified in assuming that the child could be depended upon to exercise the same degree of care for his safety as an adult, and, when defendant observed the possibility of danger, more caution was called for then would ordinarily be necessary.—Blair v. Kilbourne, Wash., 207 Pac. 953.

6.——License.—The driving of an automobile without a license did not preclude recovery for injuries sustained in a collision with another automobile, even if it be considered to constitute negligence per se, since such negligence did not cause or contribute to the accident.—Spencer v. Phillips & Taylor, Mich., 189 N. W. 204.

7. **Banks and Banking**—Deposits.—Where a person makes a deposit in a bank for the specific purpose of meeting certain checks to be thereafter issued, the bank on accepting the deposit becomes bound by the conditions imposed, and, if the money so deposited is misapplied, it can be recovered as a trust deposit.—Morton v. Woolery, N. D., 189 N. W. 232.

8.——Fraud.—A bank with which bonds proposed to be issued by a levee district were deposited by the latter's controlling directors, who were also managing officers of the bank and in complete control of its affairs, is charged with knowledge of such officers' fraudulent conduct in attempting to sell the bonds to the bank without authority and for their own purposes, and was not an innocent purchaser of the bonds.—Little Red River Levee Dist. No. 2 v. Garrett, Ark., 242 S. W. 555.

9.——Investments.—Where the cashier of a banking institution, at the direction of the directors thereof, subscribed for stock in another corporation, an electric light company, and who at their direction placed $500 in the bank to the credit of the electric company, which was checked out by it, and where it further appears that the purchase of the stock in the electric company was for the purpose of enabling the bank to procure electric light in the bank, it is held that such purchase was not a violation of section 5187, Comp. Laws 1913, as amended by chapter 54, § 1, Laws 1915, prohibiting banking institutions from investing in the stock of other corporations.—Farmers' State Bank v. Richter, N. D., 189 N. W. 242.

10.——Notice.—Where money is deposited in a bank to the credit of one person, and thereafter the bank receives notice that it is claimed by another, the bank upon proper notice is bound to hold the deposit a sufficient length of time to afford such person opportunity to asert his claim, and if the party has a reasonable time allowed him for the purpose of asserting his claim, and fails to do so, the bank may pay the deposit to the depositor without any liability to the adverse claimant.—Huff v. Oklahoma State Bank, Okla., 207 Pac. 963.

11. **Bills and Notes.**—Consideration.—Under Burns' Ann. St. 1914, §§ 9089z1, 9089c2, 9089d2, 9089g2, in an action on notes, which the complaint alleged were indorsed to plaintiff by the payee for a valuable consideration without notice of any defense, the answer, alleging payee's breach of contract with respect to certain fruit trees for which the notes were given and plaintiff's knowledge at the time she took the notes of all the terms and conditions on which they were given, cast the burden on plaintiff to prove that she acquired title as a holder in due course, though the answer admitted the execution of the notes, which disclosed on their face that they were given for value received, and no general denial was filed.—Wheat v. Goss, Ind., 136 N. E. 45.

12. **Brokers**—As Trustee.—A broker's right to commission for procuring a purchaser for property under a contract with one of the adult owners is not defeated by the fact that the broker was thereafter appointed trustee to sell the interest of the infant owners, on the theory that the subject-matter of the agency was thereby taken out of such adult owner's control and the broker's agency was terminated, since a contract employing a broker to

procure a purchaser does not require the party employing him to have any interest in the property or control over it.—Rhees v. Morris, D. C., 280 Fed. 1001.

13.——Commisions.—Under a contract between plaintiff broker in Porto Rico and defendant broker in United States. plaintiff "to receive your share of the profits on all orders received directly or indirectly from your territory," plaintiff was entitled to its share of commissions earned by defendant on sales to the Porto Rico Food Commission, though the execution of the contracts on the part of such purchaser were made within the United States.—Nicolos Hernandez & Co. v. W. T. Wellsch & Co., Cal., 207 Pac. 883.

14. **Carriers of Goods.**—Authority of Agent.—Defendant delivered to plaintiff a shipment of freight which had come in a sealed car from Georgia over the lines of several connecting carriers. The goods were found to be damaged, but plaintiff received them on the assurance from some employee of the defendant not named, but described as "the head man who had charge over the cars" at the Newark freight station, that if plaintiff would receive and remove the goods the company would pay for the damage. **Held,** that there was no proof that such employee had any authority to make such a contract, and that plaintiff, in the absence of such proof, could not recover thereon.—Gennet v. Lehigh Valley R. Co., N. J., 117 Atl. 706.

15.——Storage.—A carrier could not recover storage charges under a bill of lading and tariff schedules filed with the Interstate Commerce Commission, authorizing charges for storage "in or on railroad premises," where the goods were stored in a public street; such charges being recoverable only for storage "in or on railroad premises."—New England S. S. Co. v. Geo. H. Merrill Co. of New York, N. Y., 194 N Y. S. 908.

16 **Carriers of Live Stock**—Damages.—The measure of damages for failure to furnish a car for shipment of stock subsequently shipped elsewhere was the difference in the value of the stock at the shipping destination at the time they would have arrived and the value at the same time from the place from which they were to be shipped, less freight.—Central of Georgia Ry. Co. v. Nolan Land & Live Stock Co., Ala., 92 So. 609.

17. **Carriers of Passengers**—Bus Line.—A contenton that a bus line operating between a point within a city and a point outside of the city and charging one gross fare, but picking up and discharging passengers at any point along the route was not within Transportation Corporations Law. §§ 25, 26, requiring the municipality's consent to the operation of a bus line, as passengers were not picked up within the city to be carried to another point within the same city, was untenable.—Darling v. Darling, N. Y., 194 N. Y. S. 897.

18.——Right of Way.—Where the certificates of incorporation of a stagecoach company, incorporated in 1914 under the Transportation Corporations Law as it then existed. state that the route to be used was over certain named highways, though this act did not expressly so state, the company secured the right to use these highways.—Darling v. Service Transp. Corporation, N. Y., 194 N. Y. S. 902.

19. **Constitutional Law**—License.—A town ordinance, providing that applications for license to conduct a restaurant wherein soft drinks are to be sold shall be in writing and signed by five reputable neighboring property owners, certifying to the moral character of the applicant; that the town may refuse such license if the applicant is not of good moral character or the proposed place of business is not a proper one; that a copy of the application shall be posted for ten days; and for the filing of objections and a hearing, passed in pursuance of Laws 1920, c. 714—is not unconstitutional as being in restraint of trade or a deprivation of property without due process of law.—Springer & Kimmell v. Mayor, Etc., of Westernport, Md., 117 Atl. 748.

20.——Unlawful Search Warrant.—Acts 1921, c. 250, § 1. amending Acts 1917, c. 4, § 4, providing that the possession of intoxicating liquor is unlawful, cannot help the state's contention that the liquor seized under an unlawful search warrant is contraband in a case where the offense was committed prior to the approval of the act, since Const. U. S. Art 1, § 10, provides that no state shall pass any ex. post facto law.—Callender v. State, Ind., 136 N. E. 10.

21.——Voter.—The provision of Const. Art. 16, authorizing the adoption of amendments and requiring "a majority of the electors," means a majority of all the electors who vote at such election, so that Const. Art. 2, § 2, so amended as to exclude the words "if he shall have been duly registered according to law" from voter's qualifications, which received such a majority, was properly adopted, in view of Const. 1816, Art. 8, Rev. St. 1843, p. 57, Acts 1851, p. 54, Const. Art. 2, § 14.—Simmons v. Byrd, Ind., 136 N. E. 14.

22. **Convicts**—Constitution.—Code 1907, § 7637, providing that a convict sentenced to imprisonment for life is regarded as civilly dead, is not obnoxious to Const. 1901, § 19, providing that no conviction shall work corruption of the blood or forfeiture of estate.—Quick v. Western Ry. of Alabama, Ala., 92 So. 608.

23. **Corporations**—Directors' Power.—Where suit was instituted against the directors of a corporation individually by some of the minority stockholders to cancel a sale of the stock to the directors for alleged misrepresentations, the corporation cannot provide funds for the defense of the suit without the unanimous vote of all its stockholders, though such defense was approved by the unanimous vote at a stockholders' meeting at which not all of the stockholders were represented and the notice for which had not stated any special business was to be transacted, the mere interest of the corporation and the reputation of its directors being insufficient to authorize such defense.—Jesse v. Four-Wheel Drive Auto Co., Wis., 189 N. W. 276.

24.——Dissolved.—A corporation which carries on a professional business contrary to Gen. Code, § 8623, will be dissolved in quo warranto proceedings, and will be ousted of its franchise and barred from exercising corporate rights.—State v. Ohio Automobilists' Protective Ass'n Co., Ohio, 136 N. E. 59.

25.——Jurisdiction.—An action may be begun against a domestic corporation in any county, subject to removal to proper place of trial, under St. 1921, § 2619, subsec. 6, and the proper place of trial is the county where defendant is situated or has its principal place of business, or where the cause of action arose.—State v. Circuit Court, Wis., 189 N. W. 259.

26.——Receiver.--Where an officer of a corporation sold the assets and paid over a portion of the proceeds to a bank in discharge of his personal indebtedness to the bank, the receiver of the corporation could recover such amount from the bank, though the bank did not know that such amount belonged to the corporation.—People's State Bank v. Kelly, Ind., 136 N. E. 30.

27.——Slander.—A railroad corporation is liable for slanderous words uttered by an agent while he was acting in the scope of his employment and in the actual performance of the duties of the corporation touching the matter in question.—Hines v. Gravins. Va., 112 S. E. 869.

28. **Courts**—Duty.—The resignation of a court stenographer under Section 4795, Code of 1906 (Hemingway's Code, § 3148), does not relieve him of the duty of filing a transcript of the evidence taken down by him in a cause tried before he resigned.—Robertson v. Southern Bitulithic Co., Miss., 92 So. 580.

29. **Electricity**—Liability.—A power company, lawfully maintaining a high-powered transmission line, constructed according to the best standards of modern engineering, on one side of a highway, is not liable for inductive interference of a telephone line on the other side of the highway, or for the cost of metallicizing the telephone line, so as to prevent such interference, where the telephone line was a single wire system, with a return circuit through the ground, which was not in accordance with the best standards of modern engineering.—Phillippay v. Pacific Power & Light Co., Wash., 207 Pac. 957.

30. **Eminent Domain**—Assessments.—In such case, where the land has been enhanced in value by the construction of a public improvement, it is improper for the condemnor to show that the land bore no part of the expense of such improvement by way of assessments for benefits.—Stewart v. City of Lincoln, Neb., 189 N. W. 279.

31. **Frauds, Statute of**—Broker.—Under Comp. Laws 1915, § 11975, providing that conveyances of interests in land must be in writing signed by the grantor or by some one by him lawfully authorized in writing, a contract to sell defendants' land, entered into by a purchaser and a real estate broker who had not written authority was void, and could not have been ratified by the owner.—Jefferson v. Kern, Mich., 189 N. W. 195.

32. **Fraud**—Duty to Disclose.—Where plaintiff, who was engaged in the manufacture of certain machines, and who had knowledge concerning the weight of such machines, entered into a contract for the manufacture of a certain number of the machines by the defendant, who had no knowledge concerning the machines, and was in no position to acquire such knowledge excepting through the plaintiff, and where there was an established custom among manufacturers of machinery to rely on information regarding the weight of the machines given by the party for whom the machines were to be manufactured, the defendant, in estimating the cost of manufacturing the machines, had a right to rely on information as to the weight thereof given it by the plaintiff, and could recover from the plaintiff the loss sustained because of the false information given it by plaintiff as to the weight, regardless of whether plaintiff gave defendant such information with the fraudulent intent to deceive defendant.—Foster Mach. Co. v. Covel Mfg. Co., Mich., 189 N. W. 228.

33.——Oral Contract.—An oral contract with a broker for the sale of property is not invalid, under Code, § 1117, requiring promises not performable within a year to be in writing, where the contract of sale procured by the broker was consummated by the exercise of an option in a lease negotiated by him after the expiration of a year, if the option might have been exercised within a year.—Campbell v. Rawlings, D. C., 280 Fed. 1011.

34.——Possession.—Where goods sold are fully in possession of the seller and easily capable of delivery, manual possession by the buyer is necessary to satisfy the requirement of Pub. St. 1901, c. 215, § 3, as to receipt and acceptance.—Hill v. Dodge, N. H., 117 Atl. 728.

35. **Highways**—Signal.—The fact that the driver of a motor truck did not see a pedestrian in the highway in front of him until the truck was practically upon him does not excuse, in law, the driver's failure to signal the pedestrian, as required by Ky. St. Supp. 1918, § 2739g15, or justify the refusal of an instruction as to the driver's duty to sound such signal.—Nunnelley's Adm'r v. Muth, Ky., 242 S. W. 622.

36. **Husband and Wife**—Property.—Where husband, in making property settlement with wife, agreed to accept specified sum in cash, leaving the wife what was left, including certain notes, the mere fact that the wife realized on the notes more than it was thought that she would realize at the time the settlement was entered into was not ground for setting aside of the agreement in the absence of fraud or misrepresentation.—Silva v. Silva, Cal., 207 Pac. 888.

37. **Insurance**—Contract.—Benefit association, by long-continued acceptance of dues of member after the date on which they were due, without protest and without forfeiting his insurance, waived provision of by-laws requiring the dues to be paid in advance on or before the fourth Thursday in each month, and providing for forfeiture of insurance for non-payment on such date.—Bruns v. Milk Wagon Drivers' Union, Local 603, Mo., 242 S. W. 419.

38.——Covenant.—Plaintiff's fire insurance policy provided that the company should not be liable "for loss caused directly or indirectly by invasion * * * (unless fire ensues, and, in that event, for the damages by fire only), by explosion of any kind, or lightning." Held that, where an explosion took place in a shed 160 feet from plaintiff's building covered by the policy, the concussion damaging the building but causing no fire on plaintiff's premises, there could be no recovery.—Eaken v. Liverpool & London & Globe Ins. Co. of New York, Mo., 242 S. W. 426.

39.——Fraud.—Where a paternal benefit insurer desires to rescind the contract on the ground of fraud, it must return, or offer to return, the consideration received within a reasonable time after acquiring knowledge of the fraud; and, if there be no rescission during insured's life, then, after his death, the insurer must tender the consideration to the beneficiary within a reasonable time after discovery of the fraud, bringing the money into court if the beneficiary refuses to accept it, and failure to comply with this rule is a waiver of the fraud.—National Council of K. and L. of Security v. Walton, Ind., 136 N. E. 25.

40.——License.—Where plaintiff made an application for and paid the premium on a fire insurance policy with a mutual company, but the premises were burned before the company secured a license, the company having returned the premium, plaintiff has no enforceable claim, as, under Crawford & Moses' Dig. §§ 6019-6023, 6025, an insurance company after incorporation, but before a license is secured, has a right to solicit business, but no authority to enter into a binding contract of insurance.—Jackson v. Mutual Fire Ins. Ass'n, Ark., 242 S. W. 567.

41.——Permit.—To the extent that an incorporated attorney in fact of a co-operative system of insurance, directly or through authorized agents, operates in the state by soliciting applications from subscribers for insurance on property within the state, inspects and appraises such property for that purpose, issues and delivers policies, investigates and pays adjusted losses through its representative adjuster, or engages in that connection in other insurance activities, the attorney is "doing business" in the state, regardless of whether the policies it issues are to be construed as contracts made in or out of the state.—Thomas Canning Co. v. Canners' Exch. Subscribers, Mich., 189 N. W. 214.

42.——Surety Bond.—Under a surety bond indemnifying a bank against loss from embezzlement by its cashier, the surety is not liable for loss resulting from acts done openly and without concealment under the direction or with the approval of the bank's officers and board of directors or ratified and confirmed by them without fraud or misrepresentation.—Citizens' Guaranty State Bank v. National Surety Co., Tex., 242 S. W. 488.

43.——Time.—Where fire policy issued by a domestic farmers' mutual insurance company, incorporated under Pub. Acts 1895, No. 262, provided for ascertainment of loss by board of arbitration, a delay of more than six months by the arbitration board in passing on the claim held so unreasonable as to show bad faith, and therefore to give insured a right to bring action at law on the policy without waiting for the award, notwithstanding Pub. Acts 1917, No. 256, allowing insurance company six months after final proofs of loss to pass on claim; such statute referring only to life insurance companies.—Shapiro v. Patrons' Mut. Fire Ins. Co., Mich., 189 N. W. 202.

44. **Intoxicating Liquors**—Agency.—One securing liquor, which he delivered to another by whom it had been ordered and paid for, not from a third person, but from his own stock, held not the purchaser's agent.—People v. Heusers, Cal., 207 Pac. 908.

45.——Purpose Intended.—Where counts for having possession of property designed for the manufacture of intoxicating liquor intended for use in violation of National Prohibition Act tit. 2, § 25, and for unlawful possession for sale of a utensil intended and designed or intended for use in the unlawful manufacture in violation of Section 18, further described the property and utensil as a still and distilling apparatus, the words "distilling apparatus" could not be limited to a completed still

fully equipped and ready for operation, but might cover a 15-gallon pot and coil of copper tubing or worm, which when connected by gooseneck, would produce a completed still.—Rossman v. United States, U. S. C. C. A., 280 Fed. 950.

46. **Landlord and Tenant**—Possession.—Where a tenant enters into possesion under the terms of a written lease. he accepts the instrument. in the absence of other controlling evidence, and his failure to sign does not affect his obligation.—Watkins v. McCartney, Cal., 207 Pac. 909.

47.——Reasonable Care.—The landlord of an apartment building, who had exclusive control of the supply of water to the building and of the pipes through which it was conveyed to the bathroom in plaintiff's apartment, owed the tenant's family the duty to exert reasonable care to prevent steam and scalding water from entering the toilet tank, and the fact that the tenant's wife was injured by scalding water in the tank supports an inference that the landlord failed to perform that duty.—Wardman v. Hanlon, D. C., 280 Fed. 988.

48. **Mandamus**—Assessor.—Ministerial officers charged with the sole duty of assessing and collecting taxes to be levied for the payment of public bonds apparently validly issued are without interest or right to set up latent defects in the issuance of such bonds, as grounds for refusal to assess and collect such taxes, when summoned to do so.—State v. Fifth Jefferson Drainage Dist., La., 92 So. 592.

49. **Master and Servant**—Employee's Lien.—A corporate employee, rendering services as chemist directing production in its factories, is entitled to the benefit of Burns' Ann. St. 1914, § 8288, giving corporate employees a first lien on the corporate property for all "work and labof" performed; the words of the statute, which are used in their ordinary sense, being sufficiently comprehensive to include employees who work with head or hand, or with both.—Johnson v. Citizens' Trust Co., Ind., 136 N. E. 49.

50.——Requirement of Statute.—Rev. St. 1909, § 7839, now Rev. St. 1919, § 6798, as amended by Laws 1919, p. 443, requiring parties operating any polishing wheel or machine generating dust, smoke, or poisonous gases to equip such machine with a hood connected with a blower, was intended to prevent injury or disease through inhalation, and is not available to a servant whose eye was injured by particles flying from an emery wheel.—Mansfield v. Wagner Electric Mfg. Co., Mo., 242 S. W. 400.

51. **Municipal Corporations**—Instructions.—Where there was evidence that a pedestrian struck by a truck looked on all sides before leaving the curb and had taken several steps on a crossing provided for pedestrians before being struck, binding instructions for defendant because of contributory negligence could not have been given.—Rosenthal v. Philadelphia Phonograph Co., Pa., 117 Atl. 790.

52.——Negligence.—A pedestrian who, while crossing a bridge in a city stepped from the sidewalk into the roadway, which he knew was not a crossing for pedestrians, but was designed and used for street car and vehicle traffic, only eight feet in front of a dense cloud of smoke, held negligent and not entitled to recover for injuries received when struck by an automobile truck, though he looked and listened before stepping from the curb, especially where he failed to look again after stepping into the roadway.—Schaffer v. Union Electric Light & Power Co., Mo., 242 S. W. 436.

53.——Privy Contract.—Where a truck driver was injured at night by an unlighted obstruction in the street, he cannot recover from an electric company who had contracted with the city to keep obstruction lighted, as the electric company owed no duty to him.—Cochran v. Public Service Electric Co., N. J., 117 Atl. 620.

54.——Property.—A municipal office is not "property" in the constitutional sense, and the Legislature may abolish such an office at its pleasure.—City of Jacksonville v. Smoot, Fla., 92 So. 617.

55. **Negligence**—Firemen.—Negligence of driver of a fire truck cannot be imputed to fireman riding on the truck.—City of Grand Rapids v. Crocker, Mich., 189 N. W. 221.

56.——Shipper—In a complaint for injuries to a ship employee while handling a potato digger, allegations that the defendant manufacturer shipped the machine without removing therefrom sharp knives, which were concealed from view, and without guarding those knives, or informing the carrier of the danger, held to show the machine was so inherently dangerous as to impose a liability on the shipper independent of any contract relation with the injured employee.—Craine v. Oliver Chilled Plow Works, U. S. C. C. A., 280 Fed. 954.

57. **Parent and Child**—Loss of Services.—In an action by parents for the loss of the services of their minor son and for expenses made necessary by his injuries, the fact that the parents were not entitled to son's wages either because of his emancipation or marriage is a matter of defense, and the petition need not allege that the son was unmarried, though a petition for the death of a minor son of marriageable age, under Rev. St. 1919, §§ 4217-4219, must allege he was unmarried.—Robison v. Floesch Const. Co., Mo., 242 S. W. 421.

58. **Partnership**—Damages.—One employed by others forming a partnership, with the provision that he be made a partner when the profits reached a certain amount, was entitled to such damages as he could show he suffered by reason of being wrongfully deprived of his prospective interest in the profits of the business, where his employers wrongfully terminated the relation without cause.—Van Hoosear v. Railroad Commission of California, Cal., 207 Pac. 902.

59. **Principal and Agent**—Notice.—Where a contract of sale of a milking machine provided that notice by the buyer should be given at a certain place if the machine did not work properly, and the machine did not work properly when first installed by seller's agent, a notice to the agent was constructive notice to the seller.—Monroe & Monroe v. Cowne, Va., 112 S. E. 848.

60. **Railroads**—Contributory Negligence.—It is not contributory negligence as a matter of law for the driver of a motor truck who slowed down, drove cautiously, and continued to look and listen in approaching a track, not to stop, though his view of an approaching train was in fact obstructed by coal cars on an adjoining track, where he could reasonably expect to have seen evidences of the train's approach over the tops of the cars, and this is so even though he had a boy on the truck with him whom he could have sent ahead to signal.—Payne v. Brown, Va., 112 S. E. 833.

61.——Negligence.—Evidence held not o show that a woman driving a horse hitched to a buggy struck by a train approaching without warning was contributorily negligent as a matter of law in approaching the crossing from which her view of the train, running at high speed, contrary to the ordinance, was obstructed until her horse was almost upon the track.—Perkins v. Director General of Railroads, Va., 112 S. E. 839.

62, **Receivers**—Notice.—The court was without jurisdiction to make an order requiring defendant to give a bond, and requiring the appointment of a receiver if she failed to do so, where no notice of an application for the appointment of a receiver or for an order requiring the defendant to give bond was served on defendant.—Riegel v. Franzel, N. Y., 194 N. Y. S. 907.

63. **Sales**—Damages.—A buyer of corn was bound to minimize its damage from the seller's failure to deliver by purchasing in the open market corn to fill its alleged orders if possible.—Mexican Import. & Export. Corp. v. A. F. Leonhardt & Co., La., 92 So. 602

64.——Rescind.—Where a buyer, as shown by the undisputed proof in the seller's action for the purchase price, kept the goods for four months, without objection or notice of his intention to rescind the contract for the seller's failure to deliver within seven days as agreed, he lost his right to rescind.—City Tailors v. Gay, Ala., 92 So. 607.

65. **Street Railroads**—Negligence.—The driver of horse and wagon approaching a street car track can assume that the street car will run at a lawful speed, and is not contributorily negligent for going upon the track after once looking, and seeing no car approaching too close to prevent his crossing the track in safety, if the car was not exceeding the speed limits.—Virginia Ry. & Power Co. v. Oliver, Va., 112 S. E. 841.

66.——Warnings.—The absolute stop, look, and listen rule as formerly applied to a public highway crossing with a steam railway does not apply to street railway crossings in cities.—Union Traction Co. v. Moneyhun, Ind., 136 N. E. 18.

67. **Taxation**—Credits.—Under Const. Art. 10, § 4, exempting credits from taxation, Article 22, par. 4, providing that taxes due, owing or accruing shall not be affected except as therein otherwise provided, and paragraph 13, declaring the Constitution in effect on July 1, 1921, except as otherwise provided, and Act No. 170 of 1898, §§ 13 and 17, under which ad valorem taxes are levied for the calendar year, credits were not exempt from the taxes levied for the year 1921, as they were accruing, if not due and owing, when the Constitution took effect.—State v. Jeter, La., 92 So. 594.

68.——Personal Property.—Plaintiff's bank building, located upon the lands of another, held under a lease for a term of years, is personal property within Tax Law, §§ 4, 10, and it cannot be deducted as an investment in real estate.—Sims v. Fletcher Savings & Trust Co., Ind., 136 N. E. 26.

69. **Time**—Appeal Bond.—Under Code, § 31, requiring a bond for appeal from a municipal court to be filed within six days, exclusive of Sundays and legal holidays, the day preceding Christmas is not to be excluded in computing the time, though the clerk's office was closed during the afternoon of that day, where the appellant did not attempt to file his bond thereafter until more than six days, exclusive of Sundays and legal holidays, after the entry of the judgment.—Knabe v. Terrell & Little, D. C., 280 Fed. 979.

70.——Sunday.—In computing the period of seven days after a primary election within which a petition for appeal must be filed, a Sunday is not to be excluded under the rule that where the period is for less than seven days, so that a Sunday is not necessarily included therein, it will not be counted unless a contrary intention is manifest, but that when the period is such that the Legislature must know that one or more Sundays would occur therein the Sundays are not excluded unless there is an express declaration to that effect.—Yerkes v. Board of Sup'rs, Md., 117 Atl. 772.

71. **Trial**—Instructions.—A short, erroneous instruction, requiring the jury to find lack of probable cause, though facts known to defendant might have amounted to probable cause, was not cured by a later instruction reviewing the evidence from defendant's point of view, which was much involved in detail and concluded with a direction to find for defendant if they found the facts as therein stated.—Stein v. Lacassie, Cal., 207 Pac. 886.

72. **Vendor and Purchaser**—Mistake.—A land sale will be rescinded, or damages allowed purchaser, where a mutual material mistake is made as to identity of land intended to be purchased. Held, facts warrant rescission or damages.—Brown v. Coker, Miss., 92 So. 585.

73. **Warehousemen**—Liability.—The validity of a verdict against a succeeding warehouseman, naming an amount in damages for negligent loss and injury of the property stored, ordinarily depends upon the existence of evidence from which the jury may find not only the value of the goods when returned to bailor, but that the property came into the defendant's possession and was lost or damaged by his negligence, and its value when it came into his possession; and, in the absence of proof of either of these elements, a directed verdict for bailee is proper.—Schagrin v. Bacon, Del., 117 Alt. 741.

74. **Wills**—Letters.—Letters written by decedent while with the American Expeditionary Forces in France to petitioner held not admissible as a will of personal property executed in a foreign country according to its laws; France not being mentioned in Decedent Estate Law, § 23, as it was at time of decedent's death and before amendment by Chapter 224, Laws 1919.—In re Stein's Will, N. Y., 194 N. Y. S. 909.

75.——Undue Influence.—The court did not err in charging the jury as follows: "Honest persuasion or intercession to procure a will to be made in his favor would not amount to the exercise of undue influence on the part of John F. Ward. If you find that John F. Ward, by honest intercession or persuasion, sought to have his sister, Miss Martha A. Ward, make a will in his favor, that in itself would not amount to undue influence, and the will should not be set aside on that account alone."—Ward v. Morris, Ga., 112 S. E. 719.

76.——Unqualified Bequest.—An ambiguous provision in a will that in case of the death of any of the beneficiaries to the trust funds therein provided before the payment to them under its terms and conditions, that each trust fund should become a part of the residuary estate of decedent, would not defeat an unqualified bequest made in a preceding paragraph to a named son's wife in whom testator vested the remainder of a part of a trust created for benefit of such son.—In Re Reilly's Estate, N. Y., 194 N. Y. S. 892.

77.——Witness.—Where one attesting witness, at the request of the other witness, made in the presence of the testator, first signed the will, and the testator immediately afterwards signed, and the testator's acknowledgment was then added, there was a sufficient compliance with the statutory requirements; all the acts being part of one transaction.—In Re Barry's Estate, N. Y., 194 N. Y. S. 895.

78. **Workmen's Compensation**—Course of Employment.—Where a watchman 63 years old while making his rounds suddenly felt a sharp pain in his knee, causing him to fall, held a finding that the consequent injury was received in the course of and arose out of his employment within the Workmen's Compensation Act was warranted.—Webber's Case, Me., 117 Atl. 513.

79.——Dependent.—Where deceased employee made his home with his cousin, who had been abandoned by her husband, and thereupon became and for more than 25 years and until his death remained the breadwinner, helped her to rear her children, and was maintaining the home with and supporting her at the time of his death, she was a dependent member of his "family" within Workmen's Compensation Act (Comp. Laws 1915, § 5436).—Holmberg v. Cleveland-Cliffs Iron Co., Mich., 189 N. W. 26.

80.——Employee's Option.—Under the Workmen's Compensation Act, § 14, providing that an injured employee may, at his option, claim compensation from his employer or sue a third person liable for his injuries, or proceed against both, but that he cannot recover from both, and permitting an employer paying compensation to sue the third person to recover the indemnity paid or payable to the injured employee, the employee does not lose his right to proceed against third person until he collects compensation from his employer, although Section 32 permits the employer to file a petition and have the amount of compensation fixed.—Mitchell v. Usilton, Tenn., 242 S. W. 648.

81.——Minors.—A boy under the age of 15 years, hired without permit required by Child Labor Law, is not a lawfully employed "employee" within Workmen's Compensation Law (Comp. Laws, 1915, § 5429, subd. 2), including in the term "employee" minors legally permitted to work, and his election to accept compensation, adjusted under an agreement approved by the Industrial Accident Board, is void, and no defense to the employer's common-law liability for injuries.—Grand Rapids Trust Co. v. Petersen Beverage Co., Mich., 189 N. W. 186.